(4)

No. 91-1300

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

SHARON DUNNIGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

BRENT BEVERIDGE
Attorney at Law
110 Adams Street
Fairmont, WV 26554
(304) 363-1907
Counsel for Respondent

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for Petitioner

PETITION FOR A WRIT OF CERTIORARI FILED FEBRUARY 10, 1992
CERTIORARI GRANTED MAY 26, 1992

In the Supreme Court of the United States

OCTOBER TERM, 1992

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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[1] The following items were printed in the petition appendix and are not reprinted herein: (1) the opinion of the court of appeals; (2) the corrected order denying rehearing and rehearing en banc, as well as the accompanying opinion dissenting from the denial of rehearing en banc; (3) the judgment; and (4) the mandate.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

No. 89-36

UNITED STATES OF AMERICA, PLAINTIFF

v.

SHARON DUNNIGAN, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
Mar 07	1	INDICTMENT (offense occurred summer 1988). ns
		• • • •
01-02-90	(**)	JURY SELECTION: COPENHAVER/JUDGE; STEINKE/REPORTER. ras
01-03-90	(**)	JURY TRIAL (DAY 2): COPENHAVER/JUDGE; STEINKE/REPORTER. ras
		• • • •
01-04-90	(**)	JURY TRIAL (DAY 3): COPENHAVER/JUDGE; STEINKE/REPORTER: ras
01-04-90	(30)	VERDICT: Finding deft guilty of the charge contained in indict. ras
01-08-90	(31)	ORDER (2508): Re trial before court and jury 01-02-90 thru 01-04-90; adjudging deft GUILTY as charged in 1-ct indict; deft stands convicted of 1 violation of 21 U.S.C. 846; directing USP to conduct PSI; disp set 03-26-90 @ 1:15 p.m.; deft has until 01-11-90 to file post-trial mtns; denying deft's mtn for release on bond; deft rem to cust of USM pending sent. cc: Judge, deft, atys, USM & USP (EOD 01-09-90) ras
		• • • •

DATE	NR	PROCEEDINGS
05-21-90	(**)	SENTENCING: COPENHAVER, JUDGE; STEINKE, REPORTER. kag
05-23-90	(43)	JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT (2508): sent held 5/21/90; as to ct 1, 51 mos impr; 3 yrs super rls; $50 sp assmt; costs of custody & supervision are waived. cc: Judge, deft, atys, USM & USP. (EOD 5/23/90)
05-23-90	(44)	CONDITIONS OF PROBATION AND SUPERVISED RELEASE. kag
05-30-90	(45)	NOTICE OF APPEAL by Deft. (EOD 06-01-90) ras

• • • •

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-5668

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

SHARON DUNNIGAN, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston
John T. Copenhayer, Jr., District Judge
(CR-89-36)

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6/7/90	Criminal case docketed. (mst)
	• • • •
4/12/91	Oral argument heard. Courtroom Deputy: vsl. [90-5668] (vsl)
8/30/91	Published, authored opinion filed. [90-5668] (skt)
8/30/91	Judgment order filed. Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. KKH, Authoring Judge; JDP; RLW. [90-5668] (skt)

DATE	PROCEEDINGS
9/10/91	Motion filed by Appellee US to extend time to file petition for rehearing en banc until: 10/14/91 [1551037-1]. [90-5668] (mst)
9/10/91	Clerk order filed granting motion to extend time to file pet reh [1551037-1] until: 10/14/91. Copies to all counsel. [90-5668] (mst)
10/15/91	Petition filed by Appellee US for rehearing. Number copies filed: 15 [1565648-1], for suggestion for rehearing in banc. Number of copies filed: 15 [1565648-2] [90-5668] (mst)
10/30/91	Response [1572167-1] to motion for rehearing [1565648-1], motion for suggestion for reh in banc [1565648-2] filed by Appellant Sharon Dunnigan. [90-5668] (mst)
	• • • •
11/13/91	COURT ORDER filed denying motion for rehearing [1565648-1], denying motion for suggestion for reh in banc [1565648-2] Copies to all counsel. [90-5668] (mst)
	• • • •
11/15/91	Corrected order filed acting on denying motion for rehearing [1565648-1], denying motion for suggestion for reh in banc [1565648-2]. [90-5668] (mst)
11/20/91	Mandate issued. [90-5668] (rm)
	• • • •
11/27/91	DISSENT (to order) filed by Judge Wilkins to correcting order filed 11/15/91 re denial of appellee's petition for rehearing with suggestion for rehearing in banc. Copies to all counsel [90-5668] (mst)
	• • • •

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

Criminal No. 2:89-00036

May 21, 1990

UNITED STATES OF AMERICA

v.

SHARON DUNNIGAN, DEFENDANT

TRANSCRIPT OF PROCEEDINGS
FINAL DISPOSITION

[Filed Nov. 13, 1990]

BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:

AMY LECOCQ
Assistant U.S. Attorney
Charleston, West Virginia

For the Defendant:

DOUGLAS MILLER
Attorney
Charleston, West Virginia

[2] PROCEEDINGS

THE CLERK: The court calls the case of *United States of America versus Sharon Dunnigan*; Criminal Action No. 2:89-00036. Will the parties please note their appearances for the record.

MS. LECOCQ: Amy Lecocq on behalf of the United States.

MR. MILLER: Douglas Miller on behalf of Sharon Dunnigan.

THE CLERK: Will the parties please come forward.

(The defendant was sworn.)

THE COURT: Mr. Miller, have you been over the Probation Department's presentence report?

MR. MILLER: Yes, sir, I have, Your Honor.

THE COURT: Have you gone over it thoroughly with Miss Dunnigan?

MR. MILLER: Yes, sir, I have.

THE COURT: Can you tell me whether or not she understands it?

MR. MILLER: Yes, sir, she does.

THE COURT: Miss Dunnigan, have you read the Probation Department's presentence report in your case?

THE DEFENDANT: Yes.

THE COURT: In its entirety?

THE DEFENDANT: Yes.

[3] THE COURT: Have you gone over it thoroughly with Mr. Miller as well?

THE DEFENDANT: Yes, I have.

THE COURT: Did he explain to you everything in that report that you didn't already understand when you read it yourself?

THE DEFENDANT: Yes.

THE COURT: Is there anything at all about that report that you don't understand?

THE DEFENDANT: Well, for one thing, I don't understand how could I be at work on the 15th and before a warrant was—

THE COURT: Could you speak up a bit?

THE DEFENDANT: I'm hoarse from playing at the rec room.

THE COURT: Yes.

THE DEFENDANT: But they say that I absented myself after a warrant was put out for me.

THE COURT: Yes.

THE DEFENDANT: I was at work on the 15th and the warrant did not come out until the 31st.

THE COURT: All right. I understand that you may have some objection to the report in that regard, but my question of you now is whether or not you understand what is in the report.

THE DEFENDANT: Yes, I understand.

[4] THE COURT: All right. Now then, Mr. Miller, are there any corrections, additions, or changes that ought to be made to that report?

MR. MILLER: No, sir.

THE COURT: Do I understand then that the report is in all respects accurate?

MR. MILLER: Yes, sir, that is, the amended report we have discussed at length.

THE COURT: The amended report?

MR. MILLER: Yes, sir.

THE COURT: And that is, do I understand that after the report was first drafted, that there was some changes made in it?

MR. MILLER: Yes, sir, Your Honor.

THE COURT: I want you to look at this report and tell me whether or not this report is in all respects accurate.

MR. MILLER: Yes, sir.

THE COURT: Is that the report to which you are referring?

MR. MILLER: Right. The record would note that the document just handed back to you has [*sic*] marked also revised 5-11-90, so this is not the original. This is a revised report.

THE COURT: Very good. Now then, does the government have any changes to suggest?

[5] MS. LECOCQ: None beyond what is contained in the addendum, Your Honor.

THE COURT: That is, nothing beyond what is contained in the government's objections—

MS. LECOCQ: Yes, sir.

THE COURT: —that are set forth in the addendum?

MS. LECOCQ: Yes, sir.

THE COURT: I'll come back to that in a moment. Let me ask you, Ms. Dunnigan, whether or not you agree that this report, except for that which is set forth in the addendum, I'm not asking you about that now, do you agree that this report is in all respects accurate as prepared by the probation officer or did you have some question about that one matter that you mentioned to me earlier in this hearing?

THE DEFENDANT: I do have questions about what I mentioned, but I read all of this and what they said about me and, you know, my children and everything, most of that is true. But the other stuff, I don't really know.

THE COURT: The other stuff, now what is that? What are you speaking of?

THE DEFENDANT: I just don't understand it at all.

THE COURT: You don't understand what at all?

THE DEFENDANT: I don't understand none of Miss Brown's testimony.

THE COURT: You don't understand what?

[6] THE DEFENDANT: Miss Brown's testimony.

THE COURT: Let me ask you this. Miss Brown, of course, testified at the trial. That's what you are talking about.

THE DEFENDANT: Yes.

THE COURT: Now, the court has heard that matter and I am conversant and fully advised as to what was stated by Ms. Brown. My question of you now is about that which is contained in this report—

THE DEFENDANT: Right.

THE COURT: —and whether it is accurate or not?

THE DEFENDANT: Yes.

THE COURT: And if there is some part of it that is inaccurate, I want you to point it out to me. So far you pointed out to me what I believe to be your concern regarding the suggestion that you may have obstructed justice because you were not found shortly after the indictment was returned in the case.

THE DEFENDANT: And I would like to know where they get the 16 ounces, 17 ounces of cocaine.

THE COURT: We'll come back to that in a moment then and I'll take that up with you, too. Now, anything else besides those two?

THE DEFENDANT: No, not that I can think of at the moment.

[7] THE COURT: All right. Now then, but you've been through the report. You've read it and you understand it?

THE DEFENDANT: I've read it, yes.

THE COURT: With regard to the question of your having had an arrest warrant issued for you on March 31 but your not being arrested until October 3, 1989, the magistrate then detained you on the basis that you posed a risk of flight, and once the case was concluded, the court declined bond to you, although in reality the court did so based on what the court perceived to be your danger to the community because of your propensity to sell drugs. The court at the same time concluded that you were a risk to flee, but that was really done on the basis of both the significance of the charges that have been

proved against you in keeping with the evidence which the court heard at trial, as well as the findings that the magistrate had made earlier on that question of your risk to flee.

Consequently, I'm not particularly concerned with pursuing that phase of the obstruction of justice aspect of this sentencing hearing, unless the government wishes to pursue it further.

MS. LECOCQ: Your Honor, insofar as the obstruction of justice or impeding the proceedings adjustment to the guidelines, it is the position of the United States that the defendant testified untruthfully at trial. So regardless of whether or not she absented herself or not, the two points [8] would—would be imposed by the court under the government's theory. So if the court agrees, there is no reason to pursue the matter in dispute.

THE COURT: That is, the matter in dispute being whether or not obstruction of justice should be found on the basis of her failure to appear.

MS. LECOCQ: Yes, Your Honor.

THE COURT: If that's the case, then I think we can put that matter behind us and go on to the other prong of this matter that has been referred to by Miss Lecocq having to do with whether there is an obstruction of justice by reason of the failure of the defendant to testify truthfully on matters of substance that were material at trial.

Now then, enwebbed in the latter is in part the quantity of drugs that were involved and you raise a question about that as to whether or not sixteen ounces is appropriate. The sixteen ounces is calculated on page 2 by the probation officer and it seems to me that this was largely presented at trial as well. It is shown that on three trips to Cleveland, you were accompanied by Freddy Harris and you purchased a total of six ounces at the least on those three trips. You were accompanied by John Dean on two occasions, that is two trips and you purchased a total of four ounces on those trips. And

that you made at least three trips by bus alone to purchase a total of at least six more ounces. So that the total comes to [9] sixteen ounces and yields 453.6 grams. Now then, I understand you to dispute whether sixteen ounces is the proper figure; is that correct?

THE DEFENDANT: That's correct, and I don't see how that you could use their testimony and believe that I actually went with them or even went to Cleveland at all to purchase cocaine.

THE COURT: Yes.

THE DEFENDANT: There's no proof.

THE COURT: The jury seemed to believe their testimony.

THE DEFENDANT: There's what?

THE COURT: The jury seemed to believe that testimony, didn't they?

THE DEFENDANT: They seemed to believe it, yes.

THE COURT: And that's why you were found guilty.

Let me ask the government before we proceed further with that, what the government's view is of the total involved at least as set forth on page 2. I don't want to get in at this moment as to other conduct that may have been involved with her daughter, which is referred to in the government's objections, as I recall. I wanted to focus on this matter right now.

MS. LECOCQ: Yes, Your Honor. It would seem appropriate for the court to consider the other quantity of the [10] crack cocaine only insofar as the court might deem that it would be appropriate to sentence within the range at a particular point or for a basis for a departure upward. In other words, it's not so clear from the evidence that that cocaine was part of the same conspiracy as the cocaine referenced in paragraph 8 as to include it in the drug quantity.

THE COURT: Now, paragraph 8, could you focus on that for me and provide such support as you may have for its calculation.

MS. LECOCQ: Yes, Your Honor. In fact, this was a matter of dispute between the parties when the presentence report was first prepared, and we caused to have the entire trial transcript provided by your court reporter, and I have reviewed the trial transcript and submitted these quantities. They come from the testimony of Freddy Harris, John Dean, and others who support the quantities. I have submitted to the probation officer transcript references, and if you would like me to read those into the record, I will at this time. The three trips to Cleveland are supported in the transcript at pages 12 through 15, 66 through 67, and page 146.

THE COURT: You are speaking of the three trips to Cleveland accompanied by Freddy Harris?

MS. LECOCQ: Yes, Your Honor. That's the six ounces minimum that the court referred to. The two trips with John [11] Dean are referenced—those are four ounces, two ounces a trip, referenced at pages 87 through 90 and page 100 of the trial transcript.

The trips alone on the bus to Cleveland, the references for those trips and, again, it's a minimum of six ounces. The transcript references are page 68, 146, and 174. These transcript pages have been provided both to the probation officer and to the defendant on prior occasion, Your Honor.

THE COURT: And those latter three trips by bus were by the defendant alone?

MS. LECOCQ: Yes, Your Honor. Those are three trips where—and, again, these are minimums. She returned with one ounce, two ounces, and three ounces, making a total of six ounces minimum for trips that she took to Cleveland on the bus and traveled alone.

THE COURT: Now then, the initial question would be isn't it the fact that that was the testimony at trial?

MR. MILLER: No, sir, it isn't, Your Honor. I'm sorry.

THE COURT: Go ahead.

MR. MILLER: Actually—

THE COURT: Take those by item, if you would.

MR. MILLER: Well, the—and I have not reviewed the transcript.

THE COURT: Well, then, I think you ought to review the [12] transcript before you conclude that is inaccurate. The basis of that which Mrs. Lecocq just stated has been outlined by her with specificity and it seems to me before you attack it, you ought to review that which is stated.

MR. MILLER: Could I have a few minutes to do that, Your Honor?

THE COURT: How much time do you need to review that matter?

MR. MILLER: I can do it in five minutes.

THE COURT: We'll be in recess for ten minutes.

(At 2:35 p.m. there was a recess until 2:53 p.m.)

THE COURT: If the parties will return to the bench.

After a review of the transcript, tell me whether or not the parties are in agreement that the sections of the transcript referred to by Ms. Lecocq do indeed support the sixteen-ounce contention contained in paragraph 8 of the presentence report.

MR. MILLER: No sir, Your Honor, they don't. Upon examination of the transcript, I find that in reference to John Dean, Miss Lecocq represents that he went with Mrs. Dunnigan twice to Cleveland and on each occasion picked up two ounces. The testimony of Freddy Harris on page 67 says John Dean only went once.

THE COURT: All right. Anything else?

MR. MILLER: Yes, sir. The testimony of Andre [13] Charlton on page 146 of the transcript could very well be a double count because Mr. Harris testified that Mrs. Dunnigan brought back some ounces of cocaine on her own making trips by herself, and I think on one occasion she brought back one ounce allegedly and on the second occasion two ounces, the third occasion three ounces, and the fourth occasion he can't remember as to what the ounces was. But at any rate, Andre Charlton's testimony

does not indicate upon which one of those occasions that he participated with Freddy Harris in the sampling and the rebagging of the cocaine. In other words, we don't know what specific trip Mr. Charlton's testimony represents. However, I don't think it was an additional trip, other than the trips that Mr. Harris testified to. Consequently, the Charlton representation of one, two to four ounces, I think he said, that representation is a double count by his standard.

In addition, Your Honor, the testimony of Freddy Harris at trial was that he never did at any time weigh any of the alleged cocaine brought back by Mrs. Dunnigan. So that means that any quantity that we can arrive at would be sheer guesswork.

THE COURT: Miss Lecocq.

MS. LECOCQ: Your Honor, this is the first that I have heard that the defendant disputed the quantities that were testified to at trial.

[14] MR. MILLER: You Honor, that's not true. I filed an objection to the first set of presentence reports.

MS. LECOCQ: If I might continue, Your Honor, so that the court understands the full history.

THE COURT: Go ahead.

MS. LECOCQ: The probation officer prepared a presentence report based upon information that had been provided to him by the United States and by the defendant. That presentence report contained roughly these same quantities of cocaine. The defendant objected to the quantity of cocaine, although he could offer no—she could offer no alternative quantity of cocaine, and insisted that at the government's expense we prepare a transcript of the trial proceedings to confirm the quantities. Your court reporter prepared that transcript and the sentencing was continued in order that we might check these quantities of cocaine. I did that, Your Honor, and prepared the April 17th letter which was referenced earlier. I telephoned the defendant's counsel on several occasions in order to determine whether he had any dispute with these

quantities. He never returned my call. I received the addendum which indicated that he had no dispute with those quantities that were testified to at trial. And this is the first that I have heard that the defendant disputes that these quantities were testified to by witnesses at trial.

MR. MILLER: Your Honor—I'm sorry.

[15] MS. LECOCQ: In an attempt to address page 146, the testimony of Andre Charlton, it is clearly not an overlapping incident. The two trips to Cleveland with Freddy Harris were two trips that Freddy Harris took with the defendant in a private automobile. The discussion on page 146, as I am just now looking at it, appears to be a reference to one of the trips where Andre Charlton picked the defendant up at the bus station. And I'm not sure what the objection was to earlier concerning Freddy Harris's testimony about trips that John Dean may have taken.

MR. MILLER: He indicates—Freddy Harris indicated that John Dean took one trip, that's page 67, with Mrs. Dunnigan.

THE COURT: It seems to me that all of this which should have been done before we reached this point, Mr. Miller.

MR. MILLER: Yes, sir.

THE COURT: Once again, you have not timely informed the court of your position. What you stated in this presentence report as it appears in the addendum was that the defendant, through her counsel, acknowledges the drug amounts reported in the presentences report are those that were testified to during the trial. The defendant, however, continues to maintain her innocence.

It does not seem to me for that which is stated that you dispute those amounts, but rather that you agree to them. [16] In addition to that, I noticed at the outset today when the court asked you whether this presentence report was in all respects accurate, you said

yes, and you no more than say that, then once the question arises, you take an entirely different position. What you have done is simply waste the court's time today. It would have been so simple if you had an objection and if you had done your homework, to have made a note of precisely what it was so that the court could have dealt with it beforehand.

As has been pointed out, we have the luxury of having the transcript. We have that because an objection was made apparently at some stage as to the quantities. Once you get the material and you learn from the government that the position is supportable, you acknowledged that it is accurate, and then you've no more than said that, both in the addendum as contained in the presentence report and before the court here today, until you launch an attack with respect to those very figures.

If all court proceedings were handled this way, there would be nothing but chaos, and it is not due to anything other than the fact that you have chosen not to prepare yourself apparently for this matter until the last minute, at best.

MR. MILLER: Your Honor, that's—

THE COURT: Now, I am going to hear what you have to say, even though you are choosing a method of doing it that is [17] wasting everyone's time, all of which could have been conserved had you simply informed others of what your objection is. Now, I understand what your objection is now. I will retire in a moment after hearing more specifically from the parties doing that which the court expected the probation officer to do if you had given the probation officer an opportunity to do it. And then having done that, I will review the transcripts and make a determination.

Now, let's start at the beginning. First of all, with respect to that which is said to be the Freddy Harris related testimony, the purchase of at least six ounces on three trips, that is, on several trips I should say, on what pages do you rely for that?

MS. LECOCQ: Your Honor, the pages that I had cited were page 12 through 15, 67 through 66—

THE COURT: 67 through which?

MS. LECOCQ: I'm sorry, 66 through 67.

THE COURT: All right.

MS. LECOCQ: —and 146. Your Honor, I have not had the opportunity to double-check these pages. I assume they are accurate, but if there is some question that is raised about them, I will certainly take a look at them again. Would the court like the trips with John Dean?

THE COURT: Please.

MS. LECOCQ: Page 87 through 90 and also page 100.

[18] THE COURT: All right.

MS. LECOCQ: The trips alone on the bus to Cleveland, page 68, 146, and 174.

THE COURT: Now then, on what page of the transcript do you rely for that which is served by the government that as not being true?

MR. MILLER: Page 67 for the proposition that John Dean only took one trip to Cleveland as opposed to two.

THE COURT: All right.

MR. MILLER: And page 146, the testimony of Andre Charlton, it is not indicated which one of these trips it is of the three or four that Freddy Harris testifies that Mrs. Dunnigan went to Cleveland for him, but Andre Charlton indicates that he witnessed one of those trips, at least the proceeds of one of those trips.

THE COURT: All right. That has to do with the Harris trips?

MR. MILLER: Yes, sir.

THE COURT: The Dean trips?

MR. MILLER: That has to do with Harris trips alone as opposed to Harris—

THE COURT: Let's take them one at a time. First of all, tell me what it is that you rely upon with regard to the Harris testimony as to several trips which the government says yielded six ounces at the least?

[19] MR. MILLER: On that, I have no—that's Harris trips with Harris, I have no dispute with that.

THE COURT: Harris trips, that is, the defendant was accompanied by Harris on those trips.

MR. MILLER: Yes, sir.

THE COURT: There's no dispute about the six ounces then?

MR. MILLER: No, sir.

THE COURT: All right. The Dean trips, four ounces.

MR. MILLER: All right. There's a dispute of two of those ounces because Harris testifies Dean only made one trip, page 67.

THE COURT: All right. And that covers the Dean trips then?

MR. MILLER: Yes, sir.

THE COURT: All right.

MR. MILLER: The Charlton testimony, 146.

THE COURT: All right.

MR. MILLER: We don't know what to attribute those quantities to, first trip, second trip, third trip, by Dunnigan alone.

MS. LECOCQ: Is there a dispute to the six ounce minimum?

MR. MILLER: Where?

MS. LECOCQ: On the trips alone on the bus to [20] Cleveland?

MR. MILLER: Yes.

MS. LECOCQ: And you would prefer to have what?

MR. MILLER: I believe Freddy Harris's testimony is that the first time she went alone, she brought back one ounce; the second time, she brought back two; the third time, she brought back three.

MS. LECOCQ: Then we are in agreement, Your Honor.

MR. MILLER: Okay, all right.

MS. LECOCQ: Six ounces minimum.

MR. MILLER: Right, and you have a question mark there for the fourth because he didn't know how much that was. No dispute as to that.

THE COURT: Is it agreed then to six ounces attributable to the Harris trips for the defendant and six ounces attributable to the defendant traveling by bus alone are accurate?

MR. MILLER: Yes, sir.

THE COURT: That leaves us then with the two Dean trips and four ounces involved there. It is your position Harris says that notwithstanding what Dean said, only one trip was made by Dean with the defendant.

MR. MILLER: Yes, sir.

THE COURT: Now, what was the quantity that would be agreed upon with respect to that one trip?

[21] MR. MILLER: The government alleges that on each occasion, it was two ounces. If we can settle on the fact that only one trip was made, then I suppose two ounces might be accurate.

THE COURT: Now then, as I understand it, two ounces is in dispute to do with the Dean trip. On what does the government rely to counter that which Mr. Miller has pointed out to the effect that Freddy Harris says that Dean made only one trip, even though Dean said he made two?

MS. LECOCQ: Your Honor, John Dean testified that he made two trips and I believe the transcript pages that I have cited to the court contain his testimony concerning those two trips.

THE COURT: 87 to 90 and page 100?

MS. LECOCQ: Yes, sir.

THE COURT: So it's a question of who is correct as between the two, that is, Dean or Harris. Is that what it boils down to?

MS. LECOCQ: Yes, Your Honor. It appears, and although I hadn't looked at this earlier, that Harris merely responds how many times John went for me? Question, yes. And he says once. But the testimony of John Dean

clearly describes two separate trips in some detail. And apparently there's—there would be only an issue then if the court would believe John Dean and his detail on the two trips, or just in a series [22] of questions and answers, Freddy Harris's statement that the defendant and Mr. Dean went once.

THE COURT: Is it agreed that the only areas to which the court need look in the testimony are those that have been pointed out thus far by the parties?

MR. MILLER: Yes, sir.

THE COURT: Pages 87 and 90, page 100, and page 67. Does that cover it?

MR. MILLER: Page 146, Your Honor. That's Charlton.

MS. LECOCQ: That referred to the matter that you said we don't have a dispute on.

MR. MILLER: Oh, okay, right.

THE COURT: So that's no longer in issue, correct?

MR. MILLER: Yes, sir.

THE COURT: So again, the pages the court needs to focus on 87 to 90, page 100, and page 67.

MR. MILLER: Yes, sir.

THE COURT: I'll take just a moment to do that now. (Pause.)

MS. LECOCQ: Excuse me, Your Honor. I think that the pages I cited to the court are the pages that actually reference quantities, and the trips are discussed in some pages before, for example, before page 87, and I might direct the court to some earlier pages as far as understanding the context of those quantities that are cited in the transcript pages.

[23] THE COURT: Well, I think the parties are in agreement that the trips involved two ounces and the question is how many trips were taken insofar as John Dean is concerned.

MR. MILLER: Right.

THE COURT: So I don't think there is any dispute about the quantity in that respect. As to the number of

trips, to what pages should the court be directed besides 67 as cited by the defendant?

MS. LECOCQ: Actually, Your Honor, the testimony of Mr. Dean begins on page 83 wherein he begins to tell about the trip, and it's beginning with the first question on that page.

THE COURT: All right. How far does that extend?

MS. LECOCQ: I believe that concludes at page 90, Your Honor.

THE COURT: 83 to 90.

MS. LECOCQ: Yes, sir. And then it again begins—there's some testimony on page 101—

THE COURT: All right.

MS. LECOCQ: —and continuing there for several pages, Your Honor.

THE COURT: Now, give me the cities you want me to review that have to do with the subject matter.

MS. LECOCQ: 83 through 90, 101—I believe it's 101 through 103, Your Honor.

THE COURT: What about 100?

[24] MS. LECOCQ: We best pick that up, 100 to 103.

Your Honor, there's—I'm sorry to interrupt the court again. I hadn't looked for this previously. On pages 115 and 116, defense counsel questions Mr. Dean on this very subject, and the court may want to look at page 115 to 116.

THE COURT: All right. Now, does that cover it?

MS. LECOCQ: Yes, sir.

THE COURT: And do you have anything further?

MR. MILLER: No, sir.

THE COURT: All right. We'll be in recess for about ten minutes.

(At 3:15 p.m. there was a recess until 3:55 p.m.)

THE COURT: Do the parties have anything further on the issue of whether there would have been one or two trips of two ounces each by the defendant with John Dean?

MR. MILLER: I have nothing further, Your Honor.

MS. LECOCQ: No, Your Honor, except to state in reviewing the transcript, it seems clear that Mr. Dean describes in some detail the two trips that he took and distinguishes two separate trips to the court in his sworn testimony, and we would ask the court to credit his testimony.

THE COURT: And further aside from that matter, is there any other dispute in the presentence report that needs to be resolved?

MR. MLLER: No, sir, Your Honor, I have nothing [25] further.

MS. LECOCQ: No, Your Honor.

THE COURT: I suppose that we do have the question, however, as to the truthfulness of the defendant's testimony at trial on material matters, and I will ask whether the parties have anything further than that which is already before the court on that issue?

MS. LECOCQ: Your Honor, I think we have articulated our position satisfactory.

MR. MILLER: Your Honor, we have nothing to add to that, except for the fact that even though the jury did find the defendant guilty, she still maintains that she made no false representation at trial. Of course, that resides purely with the discretion of the court, in the sense that one has the freedom to speak to defend themselves in trials, and if that were not the case, then perhaps future defendants, including this one, would have foregone their right to testify in their own behalf, and I think to do that would be a miscarriage in terms of future defendants and this one.

THE COURT: Thank you.

And, again, there is one lingering matter and that is this. The government in its objection suggests that the court should consider departure for the reasons set forth in the objection as noted in the addendum. The reference is to Wynema Brown's testimony that she had observed the defendant's [26] daughter make crack cocaine from

cocaine powder involving a quantity of roughly 100 grams, and that that cocaine was produced for the defendant by the defendant's daughter. Let me ask whether the parties have anything further to develop on that departure issue. First, the government?

MS. LECOCQ: Your Honor, I had referenced several pages of the trial transcript, pages 174 through 177, where Ms. Brown's testimony appears, and it's clear from the testimony there that the defendant is supplying her daughter with the powder cocaine in order to make crack cocaine. Once the crack cocaine was manufactured, she retrieved the crack cocaine from her daughter and then parceled out various amounts in order for her daughter to sell and distribute the crack cocaine.

MR. MILLER: Your Honor, first of all, I would note that that testimony was allowed under similar acts, under the similar acts doctrine, and also I would call the court's attenion to the probation report.

THE COURT: At what, sir?

MR. MILLER: To the presentence investigation, presentence report.

THE COURT: Yes.

MR. MILLER: It indicates that the probation officer, Miss Brown—does not find Miss Brown to be credible. Even though the defendant in this case was convicted, we don't know that it was on the basis of credibility of the testimony of [27] Miss Brown. I would suspect and I'm sure the court would concur in some degree that the major testimony against Miss Dunnigan was Freddy Harris.

THE COURT: That what, sir? You expected something in some degree, what were you saying?

MR. MILLER: I would expect that in some degree the court might, having set through the trial, find that the most damaging testimony in the trial was presented by Mr. Dean, Mr. Harris, and Mr. Charlton. And, consequently, taking into consideration that Miss Brown's testimony came in as similar acts, that the court should

not consider an upward departure solely on the basis of Ms. Brown's testimony.

THE COURT: Thank you.

MR. MILLER: Your Honor, may I address the court on that matter?

THE COURT: Just a moment, please.

Go ahead.

MR. MILLER: Your Honor, I would call the court's attention to a letter that I received, hand delivered today at one o'clock. It's dated May 21, 1990. It's addressed to the judge of this court, in which the matter of Miss Brown's testimony is raised for the first time to my knowledge. The court addressed earlier some matters of consideration—

THE COURT: I'm not following you, sir. I have the letter of May 21, 1990, and I take it this is the rather brief [28] letter that Ms. Lecocq has addressed to the court with a copy to you under today's date. Is that the letter?

MR. MILLER: Yes, that's the letter.

THE COURT: And it seems to me that the government's request for departure is contained in the addendum to the presentence report.

MR. MILLER: Yes, sir, it is.

THE COURT: And that's under date of May 11—

MR. MILLER: Yes, sir.

THE COURT: —1990. So I am not satisfied that it is correct to say that the government is just now raising this today.

MR. MILLER: No, sir, Your Honor, perhaps that is incorrect, but you will notice attached to that letter is three or four pages of transcript. This is the first time I've seen that.

THE COURT: Well, just a moment. I don't recall having those transcript pages attached to the court's letter. Are you sure they were attached?

MR. MILLER: Yes, sir, they were.

THE COURT: Yes, I had them. I did not realize they were a part of the letter. And as I understand it, what you are complaining about is you only got the backup material of the transcript today.

MR. MILLER: Yes, sir, Your Honor.

[29] THE COURT: All right.

MR. MILLER: I had not seen any part of that transcript until today.

THE COURT: But it's from the trial transcript.

MR. MILLER: Yes, sir.

THE COURT: Anything further on that matter?

MR. MILLER: No, sir.

MS. LECOCQ: Your Honor, I would refer counsel as well to an April 17, 1990 letter to the probation officer which I copied to the defendant, which details also the testimony of Wynema Brown. The transcript pages were provided today merely to clarify her testimony, and those transcripts have been available to the defendant since they were produced.

MR. MILLER: Your Honor, may I ask the court. I could have prepared myself better for what happened here today and saved the court considerable amount of time had I had those transcripts. I was never notified to my knowledge that the transcripts were ready or that I could receive them. It's been represented to the court that on a prior occasion, I insisted at the state's expense that the transcript be reproduced. That is not true as I recall it, Your Honor. I think I recall asking for the pages of certain testimony. I did not—I did not request the entire transcript. I have not seen the entire transcript. As a matter of fact, no one has even offered me the entire transcript. Now, perhaps if that is the case, maybe [30] the United States has a cover letter or some such thing which would let me know that it was sent because I don't recall having seen it.

MS. LECOCQ: Your Honor, the transcripts were prepared as a result of the meeting that Mr. Casey, Mr. Miller, and I had concerning the presentence report. It

was determined at that meeting that there was only one way to resolve any conflicts we had. That was to get the trial transcript and review the testimony of the witnesses. I don't know whether or not Mr. Miller obtained a copy of the trial transcript. I did and I had it available to me. I assumed that he had his available to him or that he would know to ask for it when he started receiving letters from me citing transcript pages.

Regardless of that, Your Honor, we were all present at the trial. We don't need the trial transcript to recall the essence of Miss Brown's testimony, and that was as I have so stated.

THE COURT: All right. Is there anything further on the proposed basis for departure having to do with the Wynema Brown testimony as to the defendant's cocaine involvement with her daughter?

MR. MILLER: No, Your Honor, nothing further.

THE COURT: I should say cocaine base involvement with her daughter. Anything further on that?

MS. LECOCQ: No, Your Honor. Just to state that the [31] government is taking this conservative approach under—arguably those amounts could have been figured under the drug quantity table. We are satisfied to have court consider them as it chooses, either to decide within the range or for an upward departure.

THE COURT: If there's nothing further on that matter.

Now, insofar as the timing of the transcript in the hands of the defendant is concerned, are you prepared to conclude sentencing at this time?

MR. MILLER: Yes, sir, I am.

THE COURT: So that is there anything further to be developed by the parties in any respect regarding this matter?

MR. MILLER: No, sir, there isn't.

MS. LECOCQ: No, Your Honor.

THE COURT: Are there any other objections of which the court needs to take account?

MS. LECOCQ: No, sir.

MR. MILLER: No, sir.

THE COURT: With respect to the issue of whether there would have been one or two trips by the defendant with John Dean, the court observes that at trial, John Dean testified as to two specific trips. The trips are described in some detail in that on each occasion, John Dean and the defendant went to an individual whom John Dean thought to be the defendant's brother to obtain the cocaine at Cleveland.

[32] On cross-examination of John Dean, he is inquired of by the defendant—one moment—at pages 115 and 116 of the transcript respecting the Cleveland involvement in a trip or trips by the defendant with John Dean. Mr. Miller asks Mr. Dean about his grand jury testimony in that regard and the witness John Dean answers, "Like I said, the only time I remember driving is when I drove there—oh, she drove—she drove with Freddy one other time. She rode with Freddy one other time."

Then the witness is asked, "Does that indicate that you drove up there one time or two?"

The witness then answers, "It should indicate that I drove there one time is how many times I drove up here."

And at that point, Mr. Miller says, "Pardon?"

And the answer then is, "I said it should indicate that I drove there twice because that's how many times I drove up there."

The witness indicated some uncertainty at that stage as to whether it was once or twice, and when one refers to the grand jury testimony, one finds that the witness is only referring to a single trip. In his grand jury testimony when it's viewed in a larger context from page 9 through page 16, the witness notes that the source of cocaine in Cleveland was suppose to be the brother of one of the persons that, you know, went to Cleveland to purchase it.

[33] The question then was asked, "Was that person that went to Cleveland Sharon Dunnigan?" And he answers yes.

But his earlier answer to the question who was his source of cocaine in Cleveland was in total, Answer, "I can't remember his name. I only seen him one time, but he was suppose to be the brother of one of the persons that, you know, went to Cleveland to purchase it." The witness notes there that he saw him only one time, and yet in his trial testimony, he notes on each occasion that he purchased the cocaine from this same individual. Similarly, in his grand jury testimony, there is no mention of a second trip, only the travel to Cleveland on one occasion.

When the court considers that grand jury testimony, along with not only Mr. Dean's testimony on both direct and cross at trial, but also takes into account Freddy Harris's statement that John Dean went to Cleveland only once with Sharon Dunnigan, it seems to me that the court appropriately must find that for purposes of sentencing, there was but one trip of two ounces. And, accordingly, the court does so and finds the total of the defendant's involvement to be ten ounces rather than twelve. It is true that the witness Wynema Brown—excuse me, I stated the court finds the total number of ounces to be ten rather than twelve. What I should have said is the court finds the total number of ounces to be fourteen rather than sixteen.

[34] Now then, there is the further reference by the government in its objection to the Wynema Brown evidence. And the court declines to accept that evidence for purposes of sentencing. The court is satisfied that the fourteen ounces that have been detailed in the Probation Department's presentence report accurately reflects the defendant's involvement and relevant conduct in the case, and is similarly insufficient as a ground for departure in view of the totality of the circumstances involved in this instance.

Accordingly, the court is left with the question of whether the defendant is entitled—or whether, I should say, the defendant should be assessed with a two point addition for obstruction of justice by reason of her trial testimony. The court finds that the defendant was untruthful at trial with respect to material matters in this case. The defendant denied her involvement when it is clear from the evidence in the case as the jury found beyond a reasonable doubt that she was involved in the conspiracy alleged in the indictment, and by virtue of her failure to give truthful testimony on material matters that were designed to substantially affect the outcome of the case, the court concludes that the false testimony at trial warrants an upward adjustment by two levels.

I believe that covers all of the points that are raised. Unless the parties have something further, the court is prepared to conclude that the witness will stand at a level [35] of—that is, an offense level of 24 with a criminal history of I, so that the defendant is at a range of 51 to 63 months for sentencing guidelines purposes.

Now, two questions. First of all, is the court's calculation based on its findings accurate? Are the parties ready to advise the court in that regard?

MS. LECOCQ: Yes, Your Honor, it is.

MR. MILLER: Yes, sir, Your Honor, it is.

THE COURT: And before the court makes final the tentative findings so made, do the parties have any objection to the court's findings or any further comment to make regarding them? The government?

MS. LECOCQ: Yes, Your Honor. We would ask that as the court determines where to sentence within the range, that the court consider not only the defendant's untruthfulness at trial, but her untruthfulness here today in this courtroom, and we would also ask the court to consider the conduct related to the court under oath by Wynema Brown, wherein the defendant involved not

only herself but her child in the business of crack cocaine.

THE COURT: Thank you. Now, again, with respect to the findings, is there any objection to the court's findings or any other comment to be made respecting them before the court undertakes to finalize those findings?

MR. MILLER: No, sir.

[36] THE COURT: I gather there are no objections to the court's findings if I don't hear otherwise from you. I think the comments you were making, Ms. Lecocq, went more towards the point of sentencing at what point in the range. Did I understand you correctly?

MS. LECOCQ: Yes, Your Honor. I'm sorry, I thought that's what the court had inquired of me.

THE COURT: That being the case, the court adheres to the findings that it just noted on the record and makes those the findings of the court for purposes of sentence.

Now then, let me ask the parties to return to the bench, please.

I would note also that, although no particular issue has been made of it, the court having found the two-level increase by reason of the adjustment for obstruction of justice, that, correspondingly, the court declines an adjustment for acceptance of responsibility in the case, the court finding that based on that which took place at trial, as well as the defendant's continued insistence on her innocence, notwithstanding the jury verdict and the wealth of evidence developed at trial, that the defendant is not entitled to acceptance of responsibility in the case, and, once again, finds a total offense level to be 24, the criminal history to be I, and the guideline range for custody purposes to be 51 to 63 months.

[37] Do you see any reason why sentence should not now be pronounced in the case. Mr. Miller?

MR. MILLER: No, sir, I don't.

THE COURT: Mrs. Dunnigan, do you see any reason why sentence should not be pronounced in your case?

THE DEFENDANT: No.

THE COURT: Pardon?

THE DEFENDANT: No.

THE COURT: Let me ask, Mr. Miller, whether or not you have anything to say in your client's behalf, whether by way of mitigation of punishment or otherwise?

MR. MILLER: No, sir, Your Honor, nothing that would require a downward departure.

THE COURT: Quite apart from the downward departure, the court is also faced with the issue of where within the range—

MR. MILLER: Within the range.

THE COURT: —of 51 to 63 months the defendant should be sentenced. Have you anything further in that regard?

MR. MILLER: Yes, sir, Your Honor. I would just mention the fact that she is the sole support of a minor child. She has been constantly employed, unlike the other people in this trial who testified against her. She has always been a law-abiding citizen for the most part up to this point. So I think that she does need to get back to that one child that she [38] has who is still a minor. And if the court would consider that, I'm certain that she would appreciate it and so would the child.

THE COURT: Thank you. Ms. Lecocq, you mentioned a moment ago two items which the court should take into account in determining where within the range to sentence, and I'll be happy to hear you on any further matter or that again if you wish.

MS. LECOCQ: Your Honor, I would just remind the court of my earlier remarks. I don't think they need to be restated, and add the following. In light of the court's earlier ruling concerning the drug quantity, we are now at the very top of the drug quantity range for the level 22, and we are very close to offense level 24 in the drug quantity table, and we would ask the court to consider that as well in considering where within the range to sentence this defendant.

THE COURT: Thank you. Anything further in light of the government's comments, Mr. Miller?

MR. MILLER: No, sir, Your Honor.

THE COURT: Miss Dunnigan, have you anything you wish to say in your own behalf, whether by way of mitigation of punishment or otherwise?

THE DEFENDANT: I'm just sorry that you-all believe all of that and I do miss my kid and my grandchildren. I don't know what else I can say. And I can't accept any acceptance [39] because I didn't do it. That's the only thing that I can say.

THE COURT: Miss Dunnigan, let me ask you. When you say "I didn't do it"—and I want you to confer with counsel before you answer this question because I am not going to ask you to incriminate yourself in any way and so I do want you to confer with Mr. Miller before you respond and it's perfectly satisfactory with the court if you decline to answer, I will fully understand that, but my question of you is simply this. Is it your contention that this charge in its entirety is one that all of these other people who testified against you simply concocted, that it had no basis whatever? I want you to talk to your attorney about that before you answer, and if you don't wish to respond to it or if he feels you shouldn't respond to it, I want you to understand that I will be in sympathy with that declination to respond. Before you do respond, I want you to talk to Mr. Miller first.

(Pause.)

THE COURT: Mr. Miller, is there any response?

MR. MILLER: Yes, sir. I conferred with Miss Dunnigan. She indicated to me she would like to make a statement concerning the answer of your question.

THE COURT: Yes, ma'am.

THE DEFENDANT: I do believe that it was concocted. And I had received at one time two letters from different people that were in Huntington stating that they were up there [40] concocting thir story against me.

THE COURT: I am going to suggest that you may, after conferring with Mr. Miller, want to turn those letters over to the government. It seems to me that the government would be interested in exploring that matter if it is one that has any validity. And if you do choose to turn that information over to the government and if it does appear that it indicates some real basis, that stories are being concocted, lies are being prepared in order to bring about your unwarranted conviction, then I will be interested in seeing to it that the government follows the matter as well.

MR. MILLER: Your Honor, may it please the court.

THE COURT: Yes.

MR. MILLER: I have seen the letters, and in each case, the person asks not to be identified, and that is why there was no attempt.

THE DEFENDANT: Only one person asked that.

MR. MILLER: One person asked not to be identified. The other person said I would testify in your behalf but it might hurt my own case. So, in other words, these two people were unavailable to me for purposes of producing them at trial because I thought they might be more damaging to Ms. Dunnigan if we called them and they did not testify to what we expected them to testify to.

THE COURT: I leave it to the defendant as to whether [41] or not she wishes to pursue the matter.

THE DEFENDANT: Did you receive a letter from me where I had stated that in a letter?

THE COURT: I have read whatever communications you have furnished, ma'am.

THE DEFENDANT: Okay.

THE COURT: Now then, if there is nothing further —and do you have anything further, ma'am?

THE DEFENDANT: Not at the moment.

THE COURT: You understand this is the last time to say anything to the court before the court sentences you and I want you to understand that. Is there anything else you want to say?

THE DEFENDANT: No.

THE COURT: Miss Dunnigan, the court in assessing your case for purposes of sentencing notes that you are in the guideline range of 51 to 63 months. The government has indicated that the court should take into account, and the government is quite right, the court should indeed take into account the fact that you continue to protest your innocence today, notwithstanding the finding of the jury based on the evidence of quite a number of witnesses who claim to have dealt with you in cocaine. The court also takes into account that which Ms. Lecocq noted regarding the testimony of Wynema Brown respecting cocaine base involvement with your [42] daughter. Those are both serious matters, of course, and particularly if the court were to give credit to Wynema Brown's statement regarding your involvement with your daughter, that would indicate a matter of some gravity.

Insofar as you continue to profess your innocence is concerned, it seems to me you have already been assessed a high penalty in the case by virtue of the fact that, one, you were assessed an additional two points or two levels for obstruction of justice and you lost the benefit of two levels by way of acceptance of responsibility. If you had the credit for those four points so that you were sentenced at a level of 20 instead of 24, it would have made a substantial difference in the number of months that you are facing.

In addition to that, I observe that in the sentencing of those who testified against you, that Freddy Harris, the ringleader, received 78 months, although he did cooperate with the government, unlike yourself. His involvement was rather extensive and his sentence again came to 78 months. Andre Charlton received a sentence of 63 months. His involvement was that of one who tested cocaine, as I recall. And his sentence at 63 months was increased because of the obstruction aspect involved as well. John Dean cooperated with the government extensively and was largely responsible for bringing down the ring. He was sentenced to four years. And although that was a sub-

stantial sentence, nevertheless, he was facing an enormous [43] exposure in the case, but because he gave substantial assistance to the government, he was drawn down to the 48 month level.

Your role seemed to be that of contact and courier. And when I undertake to place you among all these others, it seems to me that, particularly in view of the fact that you have no prior criminal record of any moment, that the lower end of the range of 51 months is appropriate. So although I recognize the validity of the government's point that you continue to protest your innocence today and the possibility that you may have been involved, as Wynema Brown says, with your daughter in cocaine base, I am still of the notion in view of the lack of any significant criminal record on your part, that 51 months is ample in your case. It is a very long time. Even with the credit for good time, you are going to find yourself imprisoned for something in the area of 45 months or so, and that in itself is a very substantial penalty for that which you have been involved.

So the court will sentence you at the 51 month level. And will impose, as well, a term of supervised release of three years, and the court will make as special conditions those 17 conditions that apply in this district by order. The court assesses, as well, a 50 dollar special assessment in the case. Has that been paid yet by chance?

MR. MILLER: No, sir.

[44] THE COURT: And I am going to direct that be paid by you within six months from this date out of prison earnings or otherwise. The court will not impose a fine or a requirement that you pay the costs of your incarceration or that you pay the costs of your supervised release because the court finds you don't have the funds with which to do so and there is no prospect during your supervised release that you will have those funds sufficient to meet your living expenses and that of any family members, and to pay as well anything further.

So the court assesses nothing other than a 50 dollar special assessment.

Let me ask if there is anything further in this matter.

MS. LECOCQ: No, Your Honor.

MR. MILLER: I have nothing further, Your Honor.

THE COURT: If there is nothing further, good luck to you, ma'am. I would note to you that you have ten days from this date within which to appeal your conviction and sentence in this case, and if you are without funds with which to prosecute that appeal, then should you request and should you qualify, the court would appoint counsel for you at the expense of the United States and the cost of your appeal would otherwise be at the expense of the United States as well. Thank you.

I would note, if I might, that the court would like to [45] make as part of the record in this case the pages of the transcript that were furnished to the court of the John Dean testimony. And if the parties have no objection, I'll simply make that which was handed to the court that record. Is that satisfactory?

MR. MILLER: Yes, sir, Your Honor.

THE COURT: Is that all right?

MS. LECOCQ: The John Dean—oh, grand jury testimony.

THE COURT: John Dean grand jury testimony.

MS. LECOCQ: We would ask that the whole grand jury testimony be placed in the record, Your Honor.

THE COURT: It seems to me that that's unnecessary. The court was not furnished the balance of the grand jury testimony in making its determination of the issues in this case. It was furnished with that which the court requested. Once the issue of the grand jury testimony arose by virtue of the cross-examination of Mr. Miller, then I wanted it all. When I found it all, I found what was coming clear in that question and answer that Mr. Miller asked. If the government had wanted the court to consider any other grand jury testimony, it should have asked the court to do so. I declined to make the

balance of it a part of this record because it had nothing to do with this record. If the government had offered it up, it would have been reviewed. The government didn't do [46] it. It seems to me too late after the court has passed sentence to do that now.

Is there anything further?

MR. MILLER: No, sir.

THE COURT: Thank you.

(At 4:40 p.m. court adjourned.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Case Number 2:89-00036

UNITED STATES OF AMERICA

v.

SHARON DUNNIGAN

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

[Entered May 23, 1990]

Douglas Miller, Defendant's Attorney.

THE DEFENDANT:

☒ was found guilty on the single-count indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

21 U.S.C. § 846, Conspiracy to distribute cocaine, single-count.

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ It is ordered that the defendant shall pay to the United States a special assessment of $50.00, which shall be due by November 21, 1990, and shall be payable from defendant's earnings while incarcerated.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until

all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
232-84-9910

Defendant's mailing address:
1715 Holyoke
East Cleveland, Ohio

Defendant's residence address:
1715 Holyoke
East Cleveland, Ohio

May 21, 1990
Date of Imposition of Sentence

/s/ John T. Copenhaver, Jr.
Signature of Judicial Officer

JOHN T. COPENHAVER, JR.
United States District Judge
Name & Title of Judicial Officer

May 23, 1990
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Fifty-one (51) months.

☒ The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

Defendant delivered on to at , with a certified copy of this Judgment.

United States Marshal

By Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS, upon Standard Conditions of Supervised Release 1 through 17 set forth in the standing order entered by the court on September 29, 1989, including in-patient substance abuse treatment.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $, consisting of a fine of $ and a special assessment of $.

☐ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

This sum shall be paid

☐ immediately.
☐ as follows:

☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

The court has determined that the defendant does not have the ability to pay a fine or the costs of custody or supervision. It is ORDERED that these requirements are waived.

SUPREME COURT OF THE UNITED STATES

No. 91-1300

UNITED STATES, PETITIONER

v.

SHARON DUNNIGAN

ORDER ALLOWING CERTIORARI

Filed May 26, 1992

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

May 26, 1992

☆ U. S. GOVERNMENT PRINTING OFFICE: 1992 312324 47014